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IN THE

Supreme Court of the United States

October Term, 1961

No. [redacted]84

JESSE TURNER,

Appellant,

—v.—

CITY OF MEMPHIS, a Municipal Corporation Chartered Under the Laws of the State of Tennessee and DOBBS HOUSES, INC., a Corporation Organized and Existing Under the Laws of the State of Tennessee, and W. S. HAVERFIELD, Manager of the Dobbs Houses, Inc., Restaurant in Memphis Municipal Airport,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT, TENNESSEE, WESTERN DIVISION

JURISDICTIONAL STATEMENT

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IN THE

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October Term, 1960

No. .....

JESSE TURNER,

Appellant,

—v.—

CITY OF MEMPHIS, a Municipal Corporation Chartered Under the Laws of the State of Tennessee and DOBBS HOUSES, INC., a Corporation Organized and Existing Under the Laws of the State of Tennessee, and W. S. HAVERFIELD, Manager of the Dobbs Houses, Inc., Restaurant in Memphis Municipal Airport,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT, TENNESSEE, WESTERN DIVISION

JURISDICTIONAL STATEMENT

Appellant appeals from the judgment of the United States District Court, Western District of Tennessee, Western Division, which denied, after notice and hearing, appellant's prayer for injunction enjoining appellees from segregating Negroes in the Dobbs Houses Restaurant in the Memphis Municipal Airport. Appellant submits this statement demonstrating the jurisdiction of this Court upon this appeal and further demonstrating that the question presented is a substantial federal question.

Opinions Below

The per curiam opinion of the three-judge District Court, consisting of Sixth Circuit Judge John D. Martin, District Judge Marion S. Boyd, Western District Tennessee, Western Division, and District Judge William E. Miller, Middle District Tennessee, Nashville Division, is not yet reported and is, therefore, attached hereto as Appendix A.

Jurisdiction

This suit was brought in the United States District Court, Western District Tennessee, Western Division, on April 1, 1960 by appellant Turner on behalf of himself and other Negroes similarly situated. That Court's jurisdiction was invoked pursuant to provisions of Title 28, United States Code, §1343(3). The relief sought was an injunction enjoining the City of Memphis and its lessee, Dobbs Houses, from pursuing a policy, practice, custom and usage of segregating appellant, and other members of his class, in the use of certain airport facilities and with respect to service in the Dobbs Houses Restaurant located therein. Appellees' answers admitted the segregation complained of and the leasing of the restaurant facility to Dobbs Houses but alleged that certain state statutes, a state agency regulation, and several city ordinances either authorized or required segregation in the airport's restaurant and rest room facilities. Appellees alleged that unless and until these state statutes, regulation and ordinances were declared unconstitutional, segregation would be required by them and prayed for the convening of a statutory three-judge court to hear and determine this cause. However, appellees also claimed that the restaurant operated by Dobbs Houses, although leased from the city, is operated "... as a private facility, to which the 14th Amendment

does not apply, and the operator has a legal right to enforce any rules and policies which it deems advisable in regard to the seating of patrons, including the right to seat and serve patrons in separate area because of race or color." The District Court agreed with appellees that this was a case for a three-judge court which was subsequently convened. The per curiam opinion of that court —staying this cause pending suit for declaratory judgment by appellant in the state courts for construction of the statutes, regulation and ordinances involved—was rendered January 23, 1961. The order to this effect was entered on February 10, 1961. Notice of appeal was filed in the District Court on March 1, 1961. Jurisdiction of this Court to review this cause by direct appeal is conferred by Title 28, United States Code, §1253 which provides as follows:

> Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges.

The following decisions sustain the jurisdiction of this Court to review the judgment on direct appeal: *NAACP* v. *Bennett*, 360 U.S. 471 (1959); *Harrison* v. *NAACP*, 360 U.S. 167 (1959) and *Bryan* v. *Austin*, 354 U.S. 933 (1957). In the case of *Bryan* v. *Austin*, *supra*, the District Court rendered a decision, similar to the decision below, invoking the doctrine of equitable abstention in a case involving the constitutionality of a South Carolina statute denying public employment to NAACP members (E.D. S.C. 1957, 148 F. Supp. 563). However, on direct appeal to this Court, this Court vacated the order below on the ground that the case

had become moot, the statute sought to be enjoined having been repealed after the decision of the District Court in that case. In the case of *NAACP* v. *Bennett*, in which the constitutionality of an Arkansas statute affecting the NAACP was attacked, the District Court automatically remanded the case to the state court for construction of the statute (unreported). Upon appeal to this Court, the judgment of the District Court was vacated and the case remanded for consideration in the light of *Harrison* v. *NAACP*, *supra*. In the *Harrison* case, a direct appeal was taken to this Court from a judgment holding three Virginia statutes unconstitutional (E.D. Va. 1958, 159 F.Supp. 503). Upon appeal to this Court, the judgment was vacated and the case remanded with instruction to retain jurisdiction but to afford appellees a reasonable opportunity to bring appropriate proceedings in Virginia courts for construction of the statutes held unconstitutional. The exercise of jurisdiction by this Court in these three cases sustains the exercise of jurisdiction by this Court in this case.

Statutes Involved

Appellant did not rely upon or seek to enjoin the enforcement of any state statute, state regulation or city ordinance in his complaint.

In the answers filed, appellees relied upon a state regulation, promulgated by the Division of Hotel and Restaurant Inspection, Department of Conservation of the State of Tennessee, Regulation No. R-18(1), which provides:

> Restaurants catering to both white and negro patrons should be arranged so that each race is properly segregated. Segregation will be considered proper where each race shall have separate entrances and separate facilities of every kind necessary to prevent patrons

> of the different races coming in contact with the other in entering, being served, or at any other time until they leave the premises. (Tennessee Laws, Rules and Regulations for Restaurants, Department of Conservation, Division of Hotel and Restaurant Inspection. Approved June 18, 1952.)

This regulation was adopted pursuant to the provisions of §53-2121 of the Tennessee Code Ann., Vol. 9, which provides as follows:

> Rules and regulations authorized—Arbitration of inconsistencies.—The division is hereby authorized to make such rules and regulations, including a code of sanitation, as may be necessary to carry out the purposes of §§53-2101–53-2121 and to protect the public health and safety. In any instances where there is an inconsistency as between the requirements of the division and those of a local county, or city, health officer, such inconsistency is to be arbitrated by a three (3) man board consisting of the director, the local health officer concerned, and a third member to be chosen by these two.

Appellees claimed that violation of the regulation is declared to be a misdemeanor, punishable by fine, by §53-2120, Tennessee Code Ann., Vol. 9, which provides as follows:

> Violation of regulations or provisions penalized.—Every owner, manager, proprietor, agent, lessee, or other person in charge of conducting any hotel or restaurant, who shall fail or refuse to comply with any of the provisions of §§53-2101–53-2121 or with the rules and regulations promulgated by the division, shall be deemed guilty of a misdemeanor, and shall be fined not less than ten dollars ($10.00) nor more than

one hundred dollars ($100) for each offense, and each day after sufficient notice has been given shall constitute a separate offense.

By amendment to their answer, appellee Dobbs Houses also relied upon §62-710, Tennessee Code Ann., Vol. 11, which provides as follows:

> Right of owners to exclude persons from places of public accommodation.—The rule of the common law giving a right of action to any person excluded from any hotel, or public means of transportation, or place of amusement, is abrogated; and no keeper of any hotel, or public house, or carrier of passengers for hire (except railways, street, interurban, and commercial) or conductors, drivers, or employees of such carrier or keeper, shall be bound, or under any obligation to entertain, carry, or admit any person whom he shall, for any reason whatever, choose not to entertain, carry, or admit to his house, hotel, vehicle, or means of transportation, or place of amusement; nor shall any right exist in favor of any such person so refused admission; the right of such keepers of hotels and public houses, carriers of passengers, and keepers of places of amusement and their employees to control the access and admission or exclusion of persons to or from their public houses, means of transportation, and places of amusement, to be as complete as that of any private person over his private house, vehicle, or private theater, or places of amusement for his family.

The answer of appellee, City of Memphis, relied upon a city ordinance requiring segregation in rest room facilities.[1] As the basis for enforcing this ordinance, the City also cited ordinances extending the police power of the

[1] Memphis Municipal Code, 1949, Vol. 2, §§3044-29 and 3044-29(d).

City to the airport,[2] prohibiting disorderly conduct at the airport,[3] and providing for the removal of any person using the airport in violation of the law relating thereto.[4] These ordinances are set forth in Appendix B. Appellant is informed that the rest rooms in the Memphis Municipal Airport are no longer segregated. The only facility still segregated is the Dobbs Houses Restaurant.

Question Presented

Whether the three-judge court below, in a case involving segregation of Negroes by the lessee of a municipally-owned airport restaurant, abused its discretion in refusing to issue a permanent injunction enjoining such segregation and in postponing exercise of its jurisdiction pending suit for declaratory judgment by appellant in the state courts for interpretation of statutes, regulation and ordinances pleaded by appellees.

Statement

The facts in this case are not disputed. The appellant, Jesse Turner, is an adult Negro citizen of the United States and of the State of Tennessee, residing in Memphis, Tennessee. He is the executive vice-president and cashier of the Tri-State Bank in Memphis. He is also an elected official, holding the position of member of the Executive Committee of the Shelby County Democratic Party. In connection with his work, he uses the Memphis Airport approximately three or four times a year. On April 28, 1959, he and two business associates went into the main dining room of the Dobbs Houses Restaurant in the airport. Upon entering the restaurant he was stopped by a hostess and

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[2] *Ibid.*, Vol. 1, §151.26.
[3] *Ibid.*, Vol. 1, §151.27.
[4] *Ibid.*, Vol. 1, §151.40.

directed by her to a small room reserved for Negroes adjacent to the main dining room. Mr. Turner requested that he be allowed to see the manager. Appellant was addressed by appellee Haverfield who identified himself as the manager and said that Negroes are not served in the main dining room but in a separate area reserved for them. Appellant declined the invitation to be served in the small room reserved for Negroes. Thereafter, on October 29, 1959, upon returning from Atlanta as a passenger on Eastern Air Lines, appellant again requested service in the main dining room of the Dobbs Houses Restaurant. Again he was informed by the manager, Mr. Haverfield, that Negroes could not be served in the main dining room. When he asked why he could not be served in the main eating facility, he was told by the manager that the state law prevented it.

This suit was commenced by appellant on April 1, 1960 to restrain the enforcement of this segregation. Jurisdiction was invoked pursuant to the provisions of Title 28, United States Code, §1343(3). The complaint did not rely upon or seek to enjoin the enforcement of any state statute, state regulation or city ordinance. On April 21, 1960, all appellees filed answers in which they admitted all the segregation complained of and the leasing of the restaurant to Dobbs Houses but prayed the convening of a three-judge court on the ground that there had been promulgated a valid regulation of the Division of Hotel and Restaurant Inspection, Department of Conservation of the State of Tennessee, Regulation No. R-81(1), and claimed that a violation of the regulation would constitute a misdemeanor punishable by fine under §53-2120, Tennessee Code Annotated. Appellees alleged that, unless and until the regulation shall have been declared unconstitutional, their duty is to object to desegregation of the races in the airport restaurant, since such desegregation would be a violation

of the laws of the State of Tennessee and a violation of Paragraph 20 of the lease between the City and Dobbs Houses requiring the latter to abide by all state laws.

Appellees also claimed that operation of the restaurant is a private facility to which the 14th Amendment does not apply, and that Dobbs Houses has the legal right to enforce any rules and policies which it seems desirable in regard to seating patrons, including segregation on account of race. Appellee Dobbs Houses also relied upon §62-710 of the Tennessee Code granting owners the right to exclude persons from certain places of public accommodation.

There is no question that the purpose of the lease of the restaurant facility to Dobbs Houses was to provide food service for airline passengers and the members of the public using the airport.

On May 18, 1960, appellant filed a motion for summary judgment which came on for hearing on June 3, 1960. The single-judge District Court hearing the motion ruled that it could not act on the motion because the case was one for a three-judge court. Thereafter, on June 6, 1960 appellant renewed his motion for summary judgment. On June 9, 1960, an order was entered by Chief Judge McAllister of the Sixth Circuit designating the three members of the court below. The case came to trial before that court on November 9, 1960. Subsequently, on January 23, 1961 a per curiam opinion was rendered in which the court, relying upon *Harrison* v. *NAACP*, 360 U.S. 167 (1959), ruled that "in the light of the Harrison case, with its clear enunciation of the doctrine of abstention in cases of this type, we hold that the plaintiff's cause herein shall be stayed pending the prosecution of a proper declaratory judgment suit to be brought by the plaintiff in the courts of Tennessee for the purpose of obtaining an interpretation of the state statutes, regulations and city ordinances under consideration herein."

The Questions Are Substantial

The Court below abused its discretion in denying injunctive relief.

The right of Negro residents to service, without discrimination against them because of race, in publicly owned facilities leased to private persons for operation for the benefit of the public is a right guaranteed by the equal protection clause of the Fourteenth Amendment to the Constitution of the United States. *Burton* v. *Wilmington Parking Authority*, No. 164, Oct. Term 1960, decided April 17, 1961, —— U.S. ——; *Muir* v. *Louisville Park Theatrical Ass'n*, 347 U.S. 971, vacating and remanding 202 F.2d 275 (6th Cir. 1953). This right has been upheld by the Courts of Appeal and the District Courts. *Aaron* v. *Cooper*, 261 F.2d 97 (8th Cir. 1958); *City of Greensboro* v. *Simkins*, 246 F.2d 425 (4th Cir. 1957); *Derrington* v. *Plummer*, 240 F.2d 922 (5th Cir. 1956); cert. denied *Casey* v. *Plummer*, 353 U.S. 924; *Department of Conservation* v. *Tate*, 231 F.2d 615 (4th Cir. 1956); *Coke* v. *City of Atlanta*, 184 F. Supp. 579 (N.D. Ga. 1960); *Lawrence* v. *Hancock*, 76 F. Supp. 1004 (S.D. W.Va. 1948).

There was no dispute as to the facts in this case. All appellees admitted that Negroes are segregated in the Dobbs Houses Restaurant. The leasing was also admitted. The lease specifically requires Dobbs Houses to serve the public food at prices prevailing in Memphis and to make soft drinks and other items available to the public.

Failure to apply well settled principles of law to undisputed facts is an abuse of discretion in law. *Union Tool Co.* v. *Wilson*, 259 U.S. 107 (1922); *Henry* v. *Greenville Airport Commission*, 284 F. 2d 631 (4th Cir. 1960); *Clemons* v. *Board of Education of Hillsboro*, 228 F. 2d 853 (6th Cir.

1956), cert. den. 350 U.S. 1006. Consequently, the court below abused its discretion in failing to issue a permanent injunction as prayed.

The Court below abused its discretion in applying the doctrine of abstention to this case.

The doctrine of abstention which was invoked by the court below has been held by this Court to be a "extraordinary and narrow exception to the duty of a District Court to adjudicate a controversy properly before it." *County of Allegheny* v. *Frank Mashuda Co.*, 360 U.S. 185, 188 (1959). See also *Propper* v. *Clark*, 337 U.S. 472 (1949); *Public Utilities Commission* v. *United States*, 355 U.S. 534 (1958); *Chicago* v. *Atchison, Topeka & Santa Fe R. Co.*, 357 U.S. 77 (1958); *The Vessel Tungus* v. *Skovgaard*, 358 U.S. 588 (1959); *NAACP* v. *Bennett*, 360 U.S. 471 (1959). It is a doctrine which involves an exercise of discretion in "exceptional circumstances" which certainly are not present in the instant case, *County of Allegheny* v. *Frank Mashuda Co.*, *supra*, at 188-189, but which were present and identified in those cases to which the doctrine has been applied. *Railroad Commission of Texas* v. *Pullman*, 312 U.S. 496 (1941); *Burford* v. *Sun Oil Co.*, 319 U.S. 315 (1943); *Spector Motor Service* v. *McLaughlin*, 323 U.S. 101 (1944); *Alabama Public Service Commission* v. *Southern Ry. Co.*, 341 U.S. 341 (1951); *City of Meridian* v. *Southern Bell Telephone*, 358 U.S. 639 (1959); *Louisiana Power and Light Co.* v. *Thibodaux*, 360 U.S. 25 (1959); *Harrison* v. *N.A.A.C.P.*, 360 U.S. 167 (1959); *Martin* v. *Creasy*, 360 U.S. 219 (1959); *Clay* v. *Sun Insurance Co.*, 363 U.S. 207 (1960).

In the *Pullman* case this Court made clear that the doctrine is applicable to those cases where "constitutional adjudication plainly can be avoided if a definitive ruling on the state issue would terminate the controversy" (at 498).

pointing out that, "Federal courts should avoid a tentative answer which may be displaced by a state adjudication" (at 500). This test was employed in the *Spector* case, *supra*, the *Alabama Public Service Commission* case, *supra*, in *City of Meridian* v. *Southern Bell Telephone*, *supra*, *Harrison* v. *N.A.A.C.P.*, *supra*, and *Clay* v. *Sun Insurance Co.*, *supra*, when the doctrine was applied.

Here it is plain that a definitive ruling on the state law relied on by Dobbs Houses (62-710 and 53-2120) and the statute (53-2121) and regulation (No. R-18(1)) relied on by all appellees would not terminate the controversy as to whether the lessee here is subject to the Fourteenth Amendment.

In the *Pullman* case this Court also ruled that the abstention doctrine should be applied by District Courts where its invocation would avoid "needless friction with state policies" (at 500). This criterion was used to sustain application of the doctrine in *Burford* v. *Sun Oil Co.*, *supra*, where only domestic policy issues were involved, in *Alabama Public Service Commission* v. *Southern Ry.*, *supra*, involving predominantly local factors, and in *Louisiana Light and Power Co.* v. *Thibodaux*, *supra*, where the issue touched upon the relationship of City and State.

Again, it is too plain to require argument that this case does not fall into this latter category. The state policy of segregation in a public airport restaurant is constitutionally void, not only as to the state, but as to its lessee, in this instance. *Burton* v. *Wilmington Parking Authority*, *supra*; *Muir* v. *Louisville Park Theatrical Ass'n*, *supra*; *Brown* v. *Board of Education of Topeka*, 347 U.S. 483 (1954). The issuance of an injunction here would have upheld the Federal constitutional policy so often reaffirmed by this Court.

As the District Court said in *Browder* v. *Gayle* (M.D. Ala. 1956), 142 F. Supp. 707, aff'd 352 U.S. 903, "The short answer is that doctrine has no application where the plaintiffs complain that they are being deprived of constitutional civil rights for the protection of which the Federal courts have a responsibility as heavy as that which rests on the State courts" (at 713). And, "No cause for abstention by the federal court is shown merely because a suit is brought against state officials whose conduct may be affected by untested state legislation. It is only when the federal court is called on to interpret such state statutes or rule on its constitutionality that the rule applies." *Orleans Parish School Board* v. *Bush*, 268 F.2d 78, 80 (5th Cir. 1959).

Appellant, therefore, believes that the questions presented are substantial and that they are of public importance.

Simultaneous Appeal Taken to Court of Appeals

Appellant invoked the jurisdiction of the District Court pursuant to Title 28, United States Code, 1343(3) alleging that appellees, acting under color of the laws of the State of Tennessee and ordinances of the City of Memphis, were pursuing a policy, practice, custom and usage of segregating Negroes and white persons in the Dobbs Houses Restaurant in the Airport. Appellant did not rely upon or seek to have the District Court enjoin the enforcement of any specific state statute or regulation or city ordinance. Appellant's theory was that the City as well as its lessee of municipal property, which is to be operated for the benefit of the public, are clearly subject to the prohibitions of the Fourteenth Amendment—state statutes, regulations, or city ordinances to the contrary, notwithstanding, same being clearly unconstitutional in the light of prior recent decisions of this

Court. *Muir* v. *Louisville Park Theatrical Ass'n*, *supra*. Consequently, appellant conceived that an injunction could be entered by the District Court enjoining Dobbs Houses and the City of Memphis from segregating Negroes without bringing about any sudden doom of state-wide policy about which there might be some genuine questions as to constitutionality. *Ex parte Poresky*, 290 U.S. 30 (1933); *Bush* v. *Orleans Parish School Board*, 138 F. Supp. 336 (E.D. La. 1956), mandamus denied, 351 U.S. 948 (1956).

Subsequently, a three-judge court was convened and the case came on for trial after due notice. Thereafter, the court applied the abstention doctrine. Since appellant believes that there is some doubt as to whether this case is properly one for a three-judge court, appellant has taken a simultaneous appeal to the Court of Appeals for the Sixth Circuit as a precaution against the possibility that this Court might find that a three-judge court was improperly convened and the appeal should have been taken to the Court of Appeals from the District Court's application of the abstention doctrine. If this Court were to so rule, the time within which to appeal to the Court of Appeals would have expired. Appellant is preparing to docket an appeal in that Court by May [illegible], 1961 (the time having been duly extended by order of Judge Boyd). Appellant will then move the Sixth Circuit for an order staying all proceedings in that appeal pending this Court's disposition of the instant appeal. *Stainback* v. *Mo Hock Ke Lok Po*, 336 U.S. 368, 380-381. See also, *Phillips* v. *United States*, 312 U.S. 346,

355 (1941) and *Oklahoma Gas and Electric Co.* v. *Oklahoma Packing Company*, 292 U.S. 386 (1934).

Respectfully submitted.

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APPENDIX A

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE WESTERN DISTRICT OF TENNESSEE

WESTERN DIVISION

Civil Action No. 3934

JESSE TURNER,

Plaintiff,

—VS.—

CITY OF MEMPHIS, DOBBS HOUSES, INC., and W. S. HAVERFIELD,

Defendants.

Before:

MARTIN, *Circuit Judge,*
BOYD and MILLER, *District Judges.*

PER CURIAM. This is a suit by the plaintiff, who is a Negro residing in Memphis, Tennessee, on behalf of himself and others similarly situated, asking injunctive relief against the defendants, City of Memphis, Dobbs Houses, Inc., and the Manager of the latter concern's restaurant in the Memphis Municipal Airport.

The plaintiff seeks under Title 42, U.S.C.A., Sections 1981 and 1983, to secure certain rights, privileges and immunities guaranteed by the Constitution and laws of the United States. More particularly, the plaintiff is seeking to permanently enjoin the defendants from continuing to operate the eating and rest room facilities located in the airport aforesaid on a racially segregated basis.

Plaintiff claims that he was denied service in the main dining room of the Dobbs Houses Restaurant at the airport because of his race and color, pursuant to the policy, practice, custom and usage of the defendants.

The defendants contend that there are certain statutes and regulations of the State of Tennessee and ordinances of the City of Memphis which require that separate facilities for the Negro and White races be maintained at the Memphis Municipal Airport. In this connection, they contend that this Court should apply the principle of abstention, thereby giving the Courts of Tennessee an opportunity to declare the rights of the plaintiff thereunder.

In Harrison v. NAACP, 360 U.S. 167 the United States Supreme Court, in speaking on the doctrine of abstention of federal courts to permit action by the state courts, stated on page 176: "This now well-established procedure is aimed at the avoidance of unnecessary interference by the federal courts with proper and validiy administered state concerns, a course so essential to the balanced working of our federal system. To minimize the possibility of such interference a 'Scrupulous regard for the rightful independence of state governments . . . should at all times actuate the federal courts,' Matthews v. Rodgers, 284 U.S. 521, 525, as their contribution . . . in furthering the harmonious relation between state and federal authority . . . ' Railroad Comm'n. v. Pullman Co., 312 U.S. 496, 501. In the service of this doctrine, which this Court has applied in many different contexts, no principle has found more consistent or clear expression than that the federal courts should not adjudicate the constitutionality of state enactments fairly open to interpretation until the state courts have been afforded a reasonable opportunity to pass upon them. (Citing numerous cases). This principle does not, of course, involve the abdication of federal jurisdiction, but only the postponement of its exercise; it serves the policy of comity inherent

in the doctrine of abstention; and it spares the federal courts of unnecessary constitutional adjudication."

Thus, in the light of the Harrison case, with its clear enunciation of the doctrine of abstention in cases of this type, we hold that the plaintiff's cause herein shall be stayed pending the prosecution of a proper declaratory judgment suit to be brought by the plaintiff in the courts of Tennessee for the purpose of obtaining an interpretation of the state statutes, regulations and city ordinances under consideration herein.

s/ JOHN D. MARTIN
Circuit Judge

s/ MARION S. BOYD
District Judge

s/ WILLIAM G. MILLER
District Judge

Order

IN THE UNITED STATES DISTRICT COURT

WESTERN DIVISION OF TENNESSEE

WESTERN DISTRICT

Civil Action No. 3934

JESSE TURNER,

Plaintiff.

—VS.—

CITY OF MEMPHIS, *et al.*,

Defendants.

This Cause, came on to be heard on the 9th day of November, 1960, upon the pleadings, testimonies, briefs and arguments of the parties; and it appearing to the Court for the reason set forth in opinion heretofore filed that said Cause should be held in abeyance pending the Declaratory Judgment suit to be brought by Plaintiffs in the Tennessee Courts seeking an interpretation of the State statutes under consideration.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED, that said Cause be and the same is hereby held in abeyance

pending the filing of such suit and an interpretation of the State statutes involved herein.

JOHN D. MARTIN
U. S. Circuit Judge

MARION S. BOYD
District Judge

WILLIAM E. MILLER
District Judge

APPROVED:

R. B. SUGARMON
Attorney for Plaintiff

F. B. GIANOTTI, JR.
FRANK
Attorneys for Defendants.

APPENDIX B

Memphis Municipal Code, 1949, Vol. 1.

Section 151.26. Police Powers. All the powers of the police officers of the city, derived from whatever source, are hereby extended to the area embraced within the Memphis municipal airport as the same now exists, or as the same may be hereafter established.

Section 151.27. Disorderly, etc., conduct. No person shall commit any disorderly, obscene, indecent or unlawful act, or commit any nuisance on the airport.

Section 151.40. Violation of regulations; misdemeanors. Any person operating or handling any vehicle, equipment, or apparatus or using the airport or any of its facilities in violation of this chapter, or refusing to comply herewith, may be removed from the airport, and deprived of and refused the further use of the airport and its facilities for such length of time as may be determined by the airport manager.

Any offense declared to be a misdemeanor by ordinance of the city shall be a misdemeanor if committed on the Memphis municipal airport, and shall be punishable as provided by the ordinances of the city pertaining to such violation.

Memphis Municipal Code, 1949, Vol. 2.

Section 3044.29. General requirements for water closets, urinals and lavatories in all buildings other than one- and two-family dwellings and multi-family dwelling units. In all buildings other than one- and two-family dwellings and multi-family dwelling units, there shall be one or more water closets in conformity with

the general requirements of this section, together with the required number of urinals and lavatories according to the occupancy, as provided in the following sections. The lavatories shall be in an ante-room or compartment when more than one commode or urinal is required, or provided. The space provided for each fixture and other details shall be as required in Section 3044.27.

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(d) *Separate facilities required for white and black races and for both sexes.* Where buildings are used by both white and black races, separate facilities shall be provided for each race, and separate facilities shall be provided for both sexes of each race, where both men and women use any such building.

(e) *Proper signs to be affixed.* Proper signs shall be affixed on water closets indicating those provided for each race and for each of the sexes, in all buildings or places where such separate facilities are required.